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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**C.W.P. No. 12302 of 2006**
Date of Decision : 7.9.2007

**M/s Swastik Tubes (P) Ltd.** **..Petitioner**

**Versus**

**State Bank of India and another**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE M. M. KUMAR**
**HON'BLE MR. JUSTICE RAJESH BINDAL**

Present: Mr. L.M.Suri, Senior Advocate with
Mr. Neeraj Khanna, Advcate for the petitioner

Mr. Nitin Kumar, Advocate for respondent no.1

Mr. Kamal Sehgal, Advocate for respondent no.2.

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**RAJESH BINDAL, J.**

The challenge in the present writ petition is to the communication dated December 20, 2005 (Annexure P-6) issued by respondent No. 1-State Bank of India (for short "respondent-bank) whereby the petitioner was intimated that since he had failed to deposit the settled amount within stipulated period i.e. upto October 30, 2005, the compromise entered into stood cancelled and accordingly, petitioner was directed to pay the entire amount alongwith interest and legal charges.

The pleaded facts are that the petitioner-company was formed by two friends for setting up PVC manufacturing unit. It obtained financial assistance in the shape of term loan of Rs. 39,34,000/- on January 11, 1988 from respondent no.2-Haryana Financial Corporation Ltd. (for short "respondent-Corporation") and thereafter additional loan of Rs. 3,93,000/- was taken in June, 1994. Initially the payments were being made as per

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schedule, however, because of recession in the business and various other reasons beyond the control of the petitioner, unit became sick and consequently discontinued its business. As a consequence thereof, repayment of installments to respondent no. 2 were stopped and because of the default, respondent no. 2 took over the possession of the unit on July 21, 1999. In addition to the term loan facility availed from respondent no. 2, petitioner had obtained working capital limit from respondent no. 1 and to secure the same charge on the property of the company was given. After taking over the possession of the unit, same was auctioned on December 2, 1999 for a sum of Rs. 47,50,000/- as against the claim of the respondent-Corporation on that date to the extent of Rs. 7,90,866/-. Meaning thereby a sum of more than Rs. 39.50 lacs was surplus with the respondent-Corporation after adjusting its dues from the sale proceeds of the property taken over by the respondent-Corporation. The excess amount was not paid by the respondent-Corporation to the petitioner. As the petitioner was not even having the possession of the unit, there was default in repayment of working capital limit taken from respondent-bank. To square the account with the bank, petitioner moved an application for one time settlement under the scheme floated by the bank and in terms thereof request made by the petitioner was accepted vide letter dated November 8, 2004.

When the respondent-Corporation did not pay the excess amount retained by them, after adjusting their dues from the sale proceeds of the property taken over by them, the petitioner approached this court by filing Civil Writ Petition No.1758 of 2005, which was accepted by passing the following orders on October 18, 2005:-

> "Admittedly, the property sold by the Corporation was subject to second charge of the State Bank of India. As per tripartite agreement and the order of the Debts Recovery Tribunal, the amount of sale proceeds has to be remitted to the State Bank of India. Therefore, we direct the respondent Corporation to give credit of Rs. 39,57,904/- to the petitioner on the date of agreement itself and calculate interest payable to the petitioner at the same rate on which the Corporation has claimed interest

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from the petitioner prior to sale of the assets. It is needless to say that the Corporation shall be entitled to adjust handling charges amounting to Rs. 3,34,965/-. The interest so calculated and found payable shall be remitted to the State Bank of India without two weeks from today."

The above directions were given keeping in view the fact that bank was having second charge on the property, which was taken over and sold by respondent-Corporation. The above order was passed by this Court on October 18, 2005 giving a direction to the respondent-Corporation to transfer the amount to the bank within two weeks from the date of order keeping in view the fact that in terms of one time settlement, the petitioner had to clear the dues by October 30, 2005. The order passed by this Court on October 18, 2005, as referred to above, was brought to the notice of the bank by the petitioner further submitting therein that if after receipt of the amount from the Corporation any amount still remains due the same shall be paid by the petitioner immediately. However, in terms of the direction, respondent-Corporation did not remit the amount lying in excess with them alongwith interest as per direction of this Court within time specified. In this situation, petitioner, who was pressed by the respondent-bank to clear its dues in terms of settlement arrived at, served a legal notice on the Corporation on December 7, 2005. Under the situation, because of non-compliance of the terms of settlement in letter & spirit, the respondent-bank vide impugned communication dated December 20, 2005 cancelled the one time settlement.

On the other hand on account of non compliance of direction given by the Division Bench of this Court on October 18, 2005 directing respondent-Corporation to remit the excess amount lying with them along with interest to the respondent-bank, the petitioner filed COCP No.1522 of 2005. It was only after issue of notice in the Contempt Petition that respondent-Corporation remitted a sum of Rs. 16,69,684/- to the respondent-bank vide letter dated January 3, 2006, which infact was the duty of the respondent-Corporation itself in term of tripartite agreement. It was on account of inaction on the part of respondent-Corporation in

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violation of tripartite agreement that the petitioner was made to suffer.

The only plea raised in the written statement filed by the respondent-Corporation was that as the unit was sold on deferred payment basis, respondent-Corporation did not give credit of the entire amount on the date of auction. Infact auction purchaser also defaulted in payment of the loan installments. The Corporation again taken over the possession of the unit, however, the same was restored back to him. Still further, it is submitted that whatever amount was received by the respondent-Corporation from the auction-purchaser same was remitted to the bank after adjusting the dues of the Corporation.

In written statement filed by the respondent-bank, the stand was that since the petitioner had failed to observe the terms of one time settlement, no benefit flow to it in terms thereof and the bank is legally entitled to recover total outstanding amount from the petitioner along with interest thereon without sacrificing any claim admissible to the bank and prayed for dismissal of the writ petition.

We have heard learned counsel for the parties and with their assistance perused the material on record.

It is not in dispute that petitioner had raised a loan from the respondent-Corporation and the bank. For repayment whereof, the petitioner mortgaged fixed assets, having first charge with the respondent Corporation and second charge with the bank. Petitioner having defaulted in repayment of loan, the possession of unit was taken over by the respondent-Corporation and on December 2, 1999 the same was auctioned and from auctioned price after adjusting the dues of the respondent-Corporation on that date, there was surplus money of more than Rs. 39.50 lacs with the respondent-Corporation, which was not remitted by the respondent-Corporation either with the bank or to the petitioner only for the reasons that auction of the unit was on the basis of deferred payment and the petitioner was entitled to credit of the amount only after the same is received from the auction purchaser. It is not denied by the respondent-Corporation that auction-purchaser had become a loanee of the Corporation from whom Corporation was charging interest on the deferred payment.

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Under the circumstances, when the petitioner approached this court, a direction was given to the respondent-Corporation to immediately remit the entire amount to the bank along with interest from the date of sale. It was specifically directed by this Court that the amount be remitted to the respondent-bank within two weeks.

One time settlement proposal of the petitioner having been accepted by the respondent-bank vide communication dated November 8, 2004, in terms thereof the petitioner was to pay a sum of Rs. 15,47,789/- on or before November 30, 2004 without any interest or with interest at the rate of 10.25% per annum with monthly rest upto October 30, 2005. It is not disputed that the petitioner was having amount lying in the credit with the respondent-Corporation, which could clear of dues of the bank in terms of one time settlement. However, because of delay on their part in remitting the amount to the bank that too in spite of direction by this Court, one time settlement arrived at was cancelled by the bank. It is not disputed that after filing of the contempt petition by the petitioner against the officials of the respondent-Corporation, it remitted a sum of Rs. 16,69,684/- to the respondent-bank on December 29, 2005 after adjusting the amount already paid by them to the bank or the other charges. Petitioner was to pay merely a sum of Rs. 15,47,789/- upto November 30, 2004 and thereafter amount was to be paid upto October 30, 2005 along with interest at the rate of 10.25% per annum at monthly rest. Had the respondent-Corporation remitted the amount to the respondent-bank within time, the claim of the respondent-bank could have been settled in terms of the one time settlement and even if some small amount remained due on account of interest etc., the same could very well be paid by the petitioner. However, as is evident from the facts of the present case, petitioner was made to suffer only on account of inaction on the part of the respondent-Corporation in remitting the amount due to the petitioner to respondent-bank and, in our opinion, petitioner cannot be made to suffer for that.

Accordingly, we hold that, in the facts and circumstances of the case, the communication of the bank in cancelling the one time settlement arrived at to settle the account with the petitioner is arbitrary and it is

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directed that bank is entitled to recover from the petitioner any amount due after adjusting the amount received from the respondent-Corporation against the amount due to the bank in terms of one time settlement dated November 8, 2004 after calculating interest upto date.

The writ petition is disposed of in the manner indicated above.

**( Rajesh Bindal)**
**Judge**

**September 07, 2007** **(M.M.Kumar)**
**Pka** **Judge**